1113.

SUPREME COURT OF THE UNITED STATES.

No. 142.

JOHN S. WILLIAMS, ADMINISTRATOR OF JAMES WILLIAMS,

vs.

ROBERT M. GIBBES AND CHARLES OLIVER, EXECUTORS OF ROBERT OLIVER.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

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GIDEON, print.

1854.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable R. B. Taney, chief justice of our Supreme Court of the United States; William F. Giles, judge of Maryland district; Wm. Meade Addison, esquire, attorney; John W. Watkins, esq., marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

JOHN S. WILLIAMS, adm'r of James Williams,
vs.
ROBERT M. GIBBES and CHARLES OLIVER, surviving ex'ors of Robert Oliver.

Be it remembered that heretofore, to wit, on the twelfth day of October, in the year of our Lord one thousand eight hundred and fifty-two, the said Robert M. Gibbes and Charles Oliver, executors as aforesaid, by Reverdy Johnson and James M. Campbell, their solicitors, filed in the circuit court here the transcript of a record from the superior court of Baltimore city, in the words and of the tenor following, to wit:

Record.

STATE OF MARYLAND,
City of Baltimore, to wit:

At a session of the superior court of Baltimore city, in the fifth judicial circuit of the State of Maryland, begun and held at the court-house, in the city of Baltimore, on the second Monday in September, being the thirteenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-two, were present the honorable William Frick, judge; John Hayes, esquire, sheriff; Edward Dowling, clerk.

In the record and proceedings of the said court, among others were the following proceedings, to wit:

JOHN S. WILLIAMS, adm'r of James Williams, deceased,
vs.
ROBERT M. GIBBES AND CHARLES OLIVER, surviving ex'ors of Robert Oliver.

Be it remembered that heretofore, to wit, on the twenty-first day of

August, in the year eighteen hundred and fifty-two, come into the superior court of Baltimore city, sitting as a court of equity, the said John S. Williams, administrator of James Williams, deceased, the complainant in this suit, by Grafton L. Dulany, esquire, his solicitor, and exhibited his bill of complaint against the said Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, the defendants, in form following, to wit:

To the honorable William Frick, judge of the superior court of Baltimore city.

The bill of complaint of John S. Williams, administrator of James Williams, deceased, humbly complaining, showeth to your honor: That said James Williams, together with divers other persons, associated themselves together in the year eighteen hundred and sixteen, under the name of the "Mexican Company of Baltimore," and having afterwards, and in their character of such associates, and by the name aforesaid, acquired large claims against the Mexican republic, which were fully recognised by the acts or decrees of the Congress of that government of the day of , 1823, and 28th June, 1824. That the amount of said claim or claims was for the sum of one hundred and sixty thousand five hundred and sixty-three dollars and seventy-two cents, and the share of the said Williams in such claim was one undivided ninth part thereof. That a convention was made between the Government of the United States and the Republic of Mexico, on the 11th April, 1839, to ascertain and adjust the claims of citizens of the United States against the said republic. That an act of Congress to carry into effect the provisions of said treaty was passed on the 12th June, 1840. That, by virtue of said convention and act of Congress, a board of commissioners was duly appointed and organized in the city of Washington, to receive and adjudicate upon such claims of citizens of the United States embraced in the terms of the above treaty as might be brought before them. That a certain John Glenn and David M. Perine, claiming to act on behalf of, and trustees for said Mexican Company, or some of the members thereof, or their representatives, caused the claim of the said company to be submitted to the board of commissioners, with the proper evidence to sustain its amount and validity. That, accordingly on the 9th day of June, 1841, an award was passed by the said board in favor of the members of said association for the whole of the aforesaid sum of $160,563 72, with interest, at the rate of 5 per centum per annum, from the 15th April, 1817. That it was the object of the said Glenn and Perine, as indeed it was their duty, according to the general law, as well as by the terms of said award, on obtaining the funds for the amount awarded to them, to have the same carried into a court of equity and distributed under its orders according to the rights of the parties claiming or to claim the same. That, accordingly, upon an amicable suit for the distribution of said funds instituted in Baltimore county *county* court, sitting in equity, by Philip Thomas and John White *vs.* Dennis Smith, Glenn, and

Perine, and others, on the 4th October, 1841, such proceedings were had, that on the petition, and some pretended claim of Charles Oliver, Thomas Oliver, and Robert M. Gibbes, executors of Robert Oliver, the said share of one undivided ninth part of said funds which had been brought into said court belonging to the said James Williams as one of the original members of said Mexican association, was decreed to be paid to the said executors of Robert Oliver.

That Charles Oliver and Robert M. Gibbes, surviving executors, (Thomas Oliver having departed this life,) actually received under said decree for and on account of the said share of said James Williams, one of the original members of said company, the following stocks and money—that is to say—

$3,998 55 of United States 5 per cent. loan at -	$3,998 55
32,262 23 of do. do. 6 do. do. at -	32,262 23
A nd in money - - - -	3,045 63
Making as the sum total - - -	$41,306 41

The said sum of forty-one thousand three hundred and six dollars and forty-one cents, so received by said executors, under the decree aforesaid, were paid and delivered to them in the manner above set forth, on the 11th April, 1850, by the said Glenn and Perine, under the decision and decree of the court aforesaid. That such sum was the balance found to be due in said suit on account of the undivided share of said James Williams, in the ascertained settlement and distribution of the joint and partnership fund as aforesaid, awarded by the commissioners to Glenn and Perine for the use of and in trust for the benefit of the said Baltimore Mexican Company, and whom it might concern; and after all deductions had been made from the said fund for and on account of the prosecution of the said claim against the Mexican government before the board of commissioners, fees, costs, charges, and expenses, afterwards incident to the investment and reinvestment of said funds, and the proceedings in court for the final ascertainment and distribution of the same among the partners or members of said association or their assignees.

Your orator further states, that the whole funds awarded to the said Glenn and Perine for and on account of the claim of said Mexican Company was soon, or immediately after the same, carried into Baltimore county court, sitting in equity, and submitted to the jurisdiction of that tribunal for distribution, and in the interim, until it should be ascertained what charges there were against the whole company affecting the entire fund, and who, after these charges should be defrayed, was, as member of said company, entitled to his undivided or distributive share, the said Glenn and Perine did proceed, as money came to their hands, with the sanction and under the order of said court, to invest the said funds and dividends, with the profits thereof, from time to time, with their increase and accumulations; and that the same, while under such investments and accumulations, increased to

such an amount in the whole, that the share thereof of the said Williams, as a member of said company, amounted, in five and six per cent. loans of the United States and in money, to the sum of $41,306 41, as the same is hereinbefore particularly stated. That the said funds were by the said Glenn and Perine, in pursuance of the orders of the court aforesaid, kept separate and distinct, and are clearly traceable, from the time they came to their hands, through every investment made of them, down to the time when the said stocks and money were delivered to the said executors as for and on account of the said share of Williams, in his capacity as a member and partner of said Mexican Company. That a portion of said stocks and money, constituting together the aforesaid sums, were, in fact, by said Glenn and Perine, paid and delivered over to other persons than the said executors, but as your orator charges, in virtue of a contract or agreement made by and between such executors and other person or persons, and that therefore in law and equity must be taken as a virtual payment and delivery to said executors themselves.

Your orator further charges, that since the said stocks and money have come to the hands of the said executors, they have been kept and preserved separate and distinct, together with the dividends and profits thereof, and the increase and accumulations and investments of the same, and its proceeds, which have been from time to time made by said executors or for them, and by their authority; that how, and in what manner, and to what amount the money and the proceeds of said stocks, since the same have come to the hands of the said executors, have been invested and reinvested, your orator is altogether ignorant and without any means of the knowledge thereof; and that the same is within the exclusive knowledge of the said executors.

Your orator further states to your honor, that the said James Williams departed this life on or about 20th day of September, in the year 1836, in Harford county; that no letters of administration were ever taken out upon his estate, until they were in due form of law granted to your orator by the orphan's court for Harford county, on the 15th day of March, in the year 1852. That he has given bond, approved by said court, for the faithful performance of the trust reposed in him.

That neither said Williams nor your orator were ever present, or parties to, or in any manner bound by any proceeding, or order, or decree, had or passed in the aforesaid suit of Thomas White *vs.* Dennis Smith and others, in Baltimore county court, as a court of equity, or in any appeal from the doings of said court, to the court of appeals for the western shore of Maryland, and that any thing done or enacted in either of said courts was transacted in the absence of the said Williams and your orator; that the settlement and adjustment of the amount of the partnership funds of the said Mexican Company, and of the charges, and commissions, and costs, to which they were liable "in solido," and the distribution of the remainder of said funds by the decree of the court, into the several shares to which each member of said company was entitled, are in no manner binding upon, or even evi-

dence against, the said Williams or your orator. Nevertheless your orator, waiving his right to object to said settlement as to the amount thereof only, is willing that the said executors should be charged only with the sums, and stocks, and the dividends, profits, increase, and accumulations thereof so as aforesaid decreed to them, and payed and delivered over to them, or to any other person or persons, under their order and agreement, and all the dividends, proceeds, and accumulations of such stocks and money, since they were so as aforesaid paid over into their hands; and your orator expressly charges, that said executors had no title or right of any kind whatever to any portion of said money and stocks decreed as aforesaid to them for and on account of the said share of Williams, as member of the Mexican Company of Baltimore, and that the same came to their hands, and are now held by them in the contemplation of a court of equity, as trustees for the exclusive benefit of your orator.

And your orator has frequently applied to the said executors to pay and deliver over into the hands of your orator all the money so as aforesaid received by them, for or on account of the share of James Williams; and to transfer and assign to your orator all the said stocks or certificates of stocks held by them for and on account of the said share of James Williams, and the proceeds and accumulations thereof, and to come to an account with your orator concerning the same, and to pay and deliver over to your orator whatever he might, upon such accounting, be entitled to receive, your orator being willing to pay to them whatever might be found due from him.

That said Robert Oliver departed this life in the month of September, in the year 1835, having first duly and published his last will and testament, wherein he appointed the said Robert M. Gibbes, Charles Oliver, and Thomas Oliver, his executors. That Thomas Oliver departed this life in the year 1850, and that said executors some time ago duly qualified to act in that character. That your orator had well hoped that the said surviving executors would have complied with his aforesaid reasonable requests. But now, so it is, may it please your honor, that said Robert M. Gibbes and Charles Oliver, contriving and intending to defraud and injure your orator, have altogether refused so to do.

To the end, therefore, that the said Robert M. Gibbs and Charles Oliver may full, true, and perfect answers make to the statements and allegations aforesaid, as fully as if the same were again herein repeated and they were particularly interrogated thereto; and in particular that they may state whether the said Mexican Company of Baltimore had not claims upon the Republic of Mexico; and whether the same were not enforced by treaty between the United States and that country, and the award of Commissioners under the treaty, and act of Congress to carry the same into effect; whether the said James Williams, in his lifetime, was not a member of said association, and as such entitled to one undivided ninth part or share of the claim of said company upon the Mexican republic; whether the sum claimed by said company

was not awarded by said commissioners to said Glenn and Perine, as trustees; whether they, the said executors, did not receive the proceeds of the share of said James Williams in money and stocks; and at what time and in what stocks did they so receive it; and that they set forth what has become of the said stocks and the dividends thereof, and the investments and accumulations since they received the same; and that they set forth particularly what was the title to said Williams's share in said funds; did they ever receive a transfer or assignment from said Williams in his lifetime, or your orator since his death, to said share or any part thereof; if not, by what claim or pretence of a claim did they cause or procure the amount of said share to be transferred to themselves? Did they ever pay any consideration whatever therefor, either to the said Williams or your orator? And that the said executors may be decreed to transfer to your orator all the stocks or certificates of loan received by them; and all stocks into which the dividends thereof have been converted; and also all money paid to or received by them on account of said share, or the profits and proceeds thereof; and that they may account to your orator for all said stocks, money, and the proceeds thereof; and that they may be decreed to pay over to your orator whatever money on such accounting may be found due to him, and to transfer to your orator all the said stocks; and that your orator may have such other and further relief as the circumstances of his case may require and may seem meet and equitable to your honor. May it please your honor to grant to your orator the State's writ of subpœna to the said Robert M. Gibbs and Charles Oliver, surviving executors of Robert Oliver, deceased, commanding them to appear in this court on some certain day to be therein named, to answer the premises and abide by and perform such decree as may be passed therein, and as in duty bound, &c., &c.

G. L. DULANY,
Sol'r for complainant.

Whereupon issued subpœna as prayed, as follows, to wit:

The State of Maryland, to Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased, of Baltimore city, greeting:

[Seal's place.]

We command and enjoin you, that, all excuses set aside, you be in your person before the judge of the superior court of Baltimore city, at the court-house in said city, on the first day of September next, to answer the complaint of John S. Williams, administrator of James Williams, deceased, against you in the said court exhibited. Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable William Frick, judge of our said court, the first day of July, in the year of our Lord eighteen hundred and fifty-two. Issued the 21st day of August, 1852.

EDW'D DOWLING, *Clerk.*

At which said first day in September, to wit, in the year eighteen hundred and fifty-two, being the return day of the aforegoing subpœna, the same was returned to the court here with the following endorsements thereon, to wit:

STATE OF RHODE ISLAND, *Newport, sc.*

NEWPORT, *August 27th*, 1852.

I have this day made service of this subpœna by reading the same to the within named Robert M. Gibbes, in his presence and hearing.

HENRY W. ROGERS.

NEWPORT, *sc.*

NEWPORT, *August 27th*, 1852.

Then personally appeared before me the above named Henry W. Rogers, and made oath in due form of law, that the above named service was made as above stated.

WM. GILPIN, *Just. peace.*

The said cause, so standing, was continued until the first day in October then next. At which said term, to wit, on the second day of October, in the year aforesaid, the said defendants, executors as aforesaid, appear in court here by Reverdy Johnson and James Mason Campbell, esquires, their solicitors.

And on the same second day of October, to wit, at the time of entering the appearance of the said defendants as aforesaid, the said defendants, executors as aforesaid, exhibited to the court here, and filed in said cause, the following petition and bond for the removal of said cause, &c., to wit:

In the superior court of Baltimore city.

JOHN S. WILLIAMS, administrator of James Williams,
vs.
ROBERT M. GIBBES and CHARLES OLIVER, executors of Robert Oliver. } In equity.

To the honorable William Frick, judge of the superior court for Baltimore city.

The petition of Robert M. Gibbes and Charles Oliver, the defendants in the above entitled cause, showeth:

That a bill in equity hath been filed in this court, and is now pending therein, against your petitioners as executors of Robert Oliver, by John S. Williams, administrator of James Williams.

That a subpœna hath issued on said bill and been served on your petitioner, Gibbes, out of the State of Maryland.

That the complainant in said bill is a citizen of the State of Mary-

land, and the defendants therein (your petitioners) citizens of the State of New York.

That the matter in dispute in said bill exceeds the sum or value of five hundred dollars, exclusive of costs.

That your petitioners desire, under the act of Congress in such case made and provided, to remove said cause into the circuit court of the United States, for the district of Maryland, forthwith.

And they herewith offer and file bond, with good and sufficient security, for entering into said circuit court, at its next session, copies of the process aforesaid against them, and also for their there appearing.

And they pray that such bond may be accepted and approved by this court, and that this court will proceed no further in said cause, and that they may have all such other and further relief as their case demands.

REVERDY JOHNSON,
J. MASON CAMPBELL,
Solicitors for pet'rs.

[State stamp, $6] Know all men by these presents, that we, Robert M. Gibbes, of the city and State of New York, and Columbus O'Donnell and David M. Perine, of the city of Baltimore, and State of Maryland, are held and further bound unto John S. Williams, administrator of James Williams, in the full and just sum of one hundred and seventy thousand dollars, to be well and truly paid to the said John S. Williams, administrator as aforesaid, his executors, administrators, and assigns, to which payment well and truly to be made we hereby bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, this thirtieth day of September, A. D. 1852.

The condition of this obligation is such, that if the said Robert M. Gibbes and Charles Oliver shall enter in the circuit court of the United States, for the district of Maryland, at its next session, copies of the process issued against them as executors of Robert Oliver, out of the superior court for Baltimore city on its equity side, at the suit of the said John S. Williams, administrator as aforesaid, and shall appear in said court in such case, this obligation shall be void, or otherwise remain of full force and virtue.

R. M. GIBBES, [SEAL.]
COLUMBUS O'DONNELL, [SEAL.]
D. M. PERINE, [SEAL.]

Signed, sealed, and delivered, by R. M. Gibbes, in presence of—
WILLIAM H. PECKHAM.

And by Columbus O'Donnell and David M. Perine, in presence of—
J. MASON CAMPBELL.

On the back of said bond is thus endorsed, to wit:

"October 2nd, 1852, bond approved.

WM. FRICK."

1168.

And it appearing to the satisfaction of the court here, that the allegations in the said petition are true, and that the bond, with security given for the performance of the requirements set forth and expressed in the condition thereof, being deemed good and sufficient, and accepted by the court, the court thereupon pass and file in said cause the following order, to wit:

The bond required by the act of Congress being approved by the court, and filed, the court will proceed no further in this cause, as directed by the act. WM. FRICK.

Superior court, in equity, 2d October, 1852.

Whereupon, the above cause, and all the proceedings therein, *and* hereby removed into the circuit court of the United States, as prayed.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify, that the foregoing is a full and true transcript taken from the records of proceedings of the superior court of Baltimore city, in the cause therein mentioned.

In testimony whereof, I hereto set my hand, and affix the seal of the superior court aforesaid, this eighth day of October, anno Domini eighteen hundred and fifty-two.

[Seal of the superior court.]

EDW'D DOWLING,
Clerk superior court of Baltimore city.

Afterwards, to wit, on the fourth day of December, in the year of our Lord one thousand eight hundred and fifty-two, the said Charles Oliver and Robert M. Gibbes, executors as aforesaid, filed in the circuit court here their joint and several answer and exhibits thereto, to the bill of complaint of the said John S. Williams, administrator of James Williams, in the words and of the tenor following, to wit:

Answer.

JOHN S. WILLIAMS, administrator of James Williams,
vs.
CHARLES OLIVER, ROBERT M. GIBBES, surviving executors of Robert Oliver.
} In equity.

To the honorable Roger Brook Taney and John Glenn, judges of the circuit court of the United States for the Maryland district, sitting in equity.

The joint and several answer of Charles Oliver and Robert M. Gibbes, surviving executors of Robert Oliver, to the bill of complaint of John S. Williams, alleging himself to be administrator of James Williams.

These respondents, saving to themselves all exceptions to said bill, whether for form or substance, for answer nevertheless thereto, or to so

much thereof as they are advised it is material for them to answer unto, do answer and say as follows:

That they are informed and believe, that the said James Williams was a citizen of the State of Maryland, and a member of the Mexican Company of Baltimore, which was formed in that city in the year 1816, for the purpose of assisting, and which did assist General Mina to revolutionize Mexico, then a province of Spain, a country at the time in amity with the United States; and that said company made a claim in the premises on the Mexican government, but these respondents do not know whether the decrees of that government mentioned in the bill were passed, or what was their purport.

They are also informed and believe, that said Williams's share of said claim was one-ninth, and that the convention with Mexico was made, and the act of Congress passed to carry it into effect, as stated in said bill; and that a mixed commission was constituted under said convention and act of Congress to adjudicate claims; and that acting under the authority conferred upon them by a deed dated the 8th May, 1841, and a copy of which is herewith filed, marked O G W, No. 1, John Glenn and David M. Perine prosecuted the claim of said Mexican Company before said commission, and that said commission sustained said claim, and passed an award in its favor, a true copy of which is herewith filed, marked O G, No. 2; and that said Glenn and Perine, on or about the 26th October, 1841, received from the Government of the United States certificates for the payment of all of said Williams's share thereof, except the sum of $118 81; and that in a suit instituted on the equity side of Baltimore county court, in the year 1841, by Philip E. Thomas and John White, against Dennis A. Smith and others, the said court, after first investing the same pending the controversy, distributed the proceeds of said award, and such proceedings were had in said suit upon an appeal to the court of appeals of Maryland, that a decree was passed by said court at June term, 1849, adjudging to these respondents, and Thomas Oliver, their co-executor, since deceased, the whole amount of said Williams's share of said award, as will more fully appear by a copy of said decree, with the reasons therefor, herewith filed, marked O G W, No. 3; and that under process issued from said court to enforce said decree, the said Glenn and Perine, on the 11th April, 1850, paid over to these respondents and their said co-executor, on account of the net proceeds of said Williams's share then in hand, $37,175 77 in stocks and money, to wit: $3,598 70 U. S. fives; $28,883 72 U. S. sixes, valued at $30,836, and in money $2,741 07, together with a further sum of $881 12 in stocks and money, on the same day; and these respondents received, on the 5th September, 1851, on same account, from the United States, a further sum of $118 81; and these respondents further say, that on the 3d and 6th of January, 1852, they paid over and distributed the whole of what was so received on account of the share of said Williams, to the persons entitled under the will of the said Robert Oliver to receive the same, and took their

receipts and releases therefor, which they are prepared to produce when required.

These respondents further say, that they do not know, and save from said bill are not informed, and do not therefore admit, but put the complainants to prove the time of the death of the said James Williams and the grant of the letters of administration, as alleged by said bill; but they admit that their testator, Robert Oliver, died in the month of December, 1834, and that they are his surviving executors, their co-executor, Thomas Oliver, having departed this life. These respondents are also informed and believe, that the said James Williams, on the 24th June, 1819, applied for the benefit of the insolvent laws of Maryland, and on the same day made to George Winchester, esquire, who was duly appointed his provisional trustee, the deed of which a true copy is herewith filed, marked O G W, No. 4; and that the said Winchester was afterwards appointed permanent trustee of said Williams; and that at March term, 1825, of Baltimore county court, William H. Ward, one of the judges of that court, passed the order of sale in regard to said Williams's estate, of which a true copy is herewith filed, marked O G W, No. 5; and that on the 2d April, 1825, the said George Winchester, in pursuance of said order, sold to said Robert Oliver the said Williams's share in the Mexican Company for the sum of two thousand dollars, which was paid him, and made and delivered the assignment thereof, and receipt therefor, of which a true copy is herewith filed, marked O G W, No. 6; and that said sum was the fair market value of said share at the time of such sale.

And these respondents are further informed and believe, and therefore aver, that the said sale to and purchase by their testator, of said Williams's share in the Mexican Company, was fairly and bona fide made, and that in passing the order of sale therefor, as herein before mentioned, Baltimore county court had full jurisdiction over the subject, and that the title to said share passed under the same, and also by force of the act of Assembly of the State of Maryland, passed at December session, 1841, chapter 309.

And these respondents plead the statute of limitations in bar to the bill of complaint and to the claims therein mentioned, and further rely upon, and plead in bar, that the remedy of the complainant, if any, (which is denied,) is at law; and they further plead in bar the illegality of the original transaction out of which the claim sued for arises, and pray to have the same benefit of all these their defences as if the same were formally and technically pleaded.

And these respondents further aver, that letters testamentary on the estate of Robert Oliver were granted to them and their deceased co-executor on the 10th June, 1835, and that public notice was given by them in that year, in conformity with the requisitions of the testamentary law of Maryland, to all persons having claims against said deceased, to exhibit the same to them, with the vouchers therefor, on or before the 16th of March, 1836, and that the said James Williams hath not at any time exhibited any claim against said deceased; and that the

pretended claim of the complainant was not exhibited to them within the time limited by said notice, or before the payment over and distribution by them herein before set forth, and that they have no assets of said Oliver in hand, except a fund received by them as assignees of the interest of a certain Lyde Goodwin, under the award aforesaid; and that said fund, after deducting the expenses incurred in regard to it, is retained by them to await the decision of a suit instituted by a certain John Deacon in this court, and now pending in the Supreme Court, for the recovery of the same; and that there is another suit now pending in this court against them for the recovery of said fund, instituted by the administrator of Lyde Goodwin.

And these respondents are advised and believe, that the facts and circumstances above detailed are a bar, and they do hereby plead and rely on the same in bar of any recovery by the complainant in this cause.

And these respondents are further informed and believe, and therefore aver and plead, in bar of the recovery sought by the bill, that public notice was given in one or more of the Baltimore daily papers, and elsewhere, to all claimants on Mexico under the treaty of 1839, to produce their claims before the mixed commission herein before mentioned, and also to all persons interested in the funds distributed by Baltimore county court, in the case herein before mentioned, to exhibit their claims thereon to said court, as will appear by copies of such notices and certificates of the publication thereof herewith filed, marked O G W, No. 7; and that neither the said James Williams nor his administrator ever made any claim either before said commission or in said court upon any account.

R. M. GIBBES, *for himself and*
CHARLES OLIVER,
Surviving executors of Robert Oliver, deceased.

REVERDY JOHNSON,
J. M. CAMPBELL,
Respondents' solicitors.

STATE OF NEW YORK,
City of New York, to wit.

Be it remembered, and it is hereby certified, that on this third day of December, A. D. 1852, before me the subscriber, a commissioner appointed by the circuit court of the United States, in and for the second circuit and southern district of New York, to take affidavits, &c., personally appeared Robert M. Gibbes, esq., and made oath on the Holy Evangely of Almighty God that the matters and things stated in the foregoing answer are true, to the best of his knowledge and belief.

In witness of which I have hereto set my hand and seal at said city, on the day and year above written.

GEORGE W. MORTON, *U. S. com'r.*

UNITED STATES OF AMERICA,
Southern district of New York, to wit.

I, John W. Nelson, clerk of the circuit court of the United States, for the southern district of New York, second circuit, do hereby certify, that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the foregoing jurat, and that the signature to the same is in his proper handwriting. And I do further certify, that he was at the time of signing the same a United States commissioner, duly appointed under and by virtue of the acts of Congress in such case made and provided, by the circuit court of the United States for the southern district of New York.

In witness whereof I have hereto subscribed my name and affixed the seal of said circuit court, this third day of December, anno Domini 1852, and of the independence of the United States the seventy-seventh.

[SEAL.]

JOHN W. NELSON, *Clerk*.

Exhibit to answer O G W, No. 1.

JOHN S. WILLIAMS, adm'r of JAMES WILLIAMS,
vs.
CHARLES OLIVER and ROBERT M. GIBBES, surviving executors of Robert Oliver.

Whereas certain claims have been preferred before the Board of Commissioners, under the convention of the eleventh day of April, eighteen hundred and thirty-nine, between the United States of America and the Mexican republic, on behalf of the Mexican Company of Baltimore, of which company the undersigned are members, or the assignees of members thereof; and whereas Dennis A. Smith had also a certain claim or claims against said Mexican republic, of which some of the undersigned are also assignees; and whereas it is desirable that the whole of the said claims be vested in trustees, in order to receive and obtain such claims, and to distribute the same among the parties interested, according to their respective rights and interests; and whereas John White, Philip E. Thomas, and the executors of Robert Oliver, deceased, are the assignees of the entire interest of said Dennis A. Smith in and to said claims, and David Hoffman, Benjamin C. Howard, Charles F. Mayer, and Robert S. Hollins, are the assignees of the interest of Hollins and McBlair in said claims; and whereas the executors of Robert Oliver are the assignees of the several interests of John Gooding, James Williams, and Lyde Goodwin; and whereas John Glenn and Edward Morgan are the assignees of the interest of Thomas Sheppard in and to said claims; and whereas John Sullivan is the surviving partner of Jeremiah Sullivan, and as such entitled to the interest of said Jeremiah Sullivan; and whereas Henry Schwartze is the assignee of Peter A. Guestier, who was the assignee of the interests of Descaves and Mercier in said claims:

Now know all men by these presents that we, the said John White, Philip E. Thomas, and the executors of Robert Oliver, by David M. Perine their attorney, Edward Morgan, John Glenn, David Hoffman, Benjamin C. Howard, Charles F. Mayer, and Robert S. Hollins, John Sullivan and Henry Schwartze, have granted, bargained, and sold, and do hereby grant, bargain, and sell, unto John Glenn and David M. Perine, above named, their executors, administrators, and assigns, all the right, title, and interest in and to all and every part of the claims aforesaid, under said convention as aforesaid: To have and to hold the same to the said John Glenn and David M. Perine, and the survivor of them, and the executors, administrators, and assigns of such survivor; in trust to receive said claims, and all and every of the proceeds thereof, and the same, when received, to deposit in the Mechanics' Bank of Baltimore, and there to remain until the same be divided and distributed according to the rights of the parties respectively claiming or to claim any part of the same.

In witness whereof we hereunto set our hands and seals this eighth day of May, in the year of our Lord one thousand eight hundred and forty-one.

R. M. GIBBES, [SEAL.]
CHARLES OLIVER, [SEAL.]
THOMAS OLIVER, [SEAL.]
Ex'rs of Robert Oliver, by D. M. Perine, their att'y.
EDWARD MORGAN, [SEAL.]
J. GLENN, [SEAL.]
Assignees of Thomas Sheppard.
DAVID HOFFMAN, [SEAL.]
BENJAMIN C. HOWARD, [SEAL.]
CHARLES F. MAYER, [SEAL.]
ROBERT S. HOLLINS, [SEAL.]
JOHN SULLIVAN, [SEAL.]
H. SCHWARTZE, [SEAL.]

Signed, sealed, and delivered in the presence of—
WILLIAM EICHELBERGER, of J.,
JAMES S. WHITE.

UNITED STATES OF AMERICA,
State of Maryland, city of Baltimore, sct.

I, William Eichelberger, of J., notary public, by letters patent under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State of Maryland, do hereby certify, attest, and make known, that David M. Perine, attorney for the executors of Robert Oliver, deceased, Edward Morgan, John Glenn, David Hoffman, Benjamin C. Howard, Charles F. Mayer, and Robert S. Hollins, John Sullivan and Henry Schwartze, all of the said city of Baltimore, personally appeared before me, and signed and sealed the foregoing deed of trust or instrument of writing, and sever-

ally acknowledged the same to be their respective act and deed. And the said David M. Perine also acknowledged the said deed of trust or instrument of writing to be the act and deed of Robert M. Gibbes, Thomas Oliver, and Charles Oliver, the executors of said Robert Oliver, deceased.

And I do hereby further certify, attest, and make known, that of my own knowledge I am satisfied that David M. Perine, Edward Morgan, John Glenn, David Hoffman, Benjamin C. Howard, Charles F. Mayer, Robert S. Hollins, John Sullivan, and Henry Schwartze, who have executed and acknowledged the foregoing deed of trust or instrument of writing, are the persons named and described as, and professing to be, parties therein.

In testimony whereof I, the said notary, have hereto set my hand, and affixed my notarial seal, the eighth day of May, eighteen hundred and forty-one, and of the independence of the United States the sixty-fifth.

(Signed) WILLIAM EICHELBERGER, of J.,
Notary Public.

Exhibit to answer O G W, No. 2.

(Copy.)

Board of Commissioners for adjusting claims of American citizens on Mexico, under the convention between that government and the United States, concluded on the 11th day of April, 1839.
Sitting of Wednesday, June 9, 1841.

In the cases of Oliver and of Smith, the board unanimously adopted the decree which is in the words following, to wit:

Oliver's case.

Under the denomination of Oliver's case were comprehended two distinct claims, i. e.:

1st, The claim of Dennis A. Smith, amounting to $84,230\frac{75}{100}$; and 2d, the claim of the Mexican Company of Baltimore, amounting to $160,563\frac{75}{100}$, both sums being for arms, vessels, munitions of war, goods, and money furnished by the said Smith and the said company, respectively, to General Mina, for the service of Mexico, in the years 1816 and 1817; and the Mexican and American commissioners, in deliberating upon the first of the above-named claims, to wit, that of Dennis A. Smith, having disagreed as to the time from which interest, at the rate of six per centum thereon should commence to run, and as to the correctness of an item of $10,000, part of the aforesaid sum of $84,230\frac{75}{100}$, the said claim, with that exception, having been unanimously agreed to be correct, they referred the aforesaid points in dispute to the umpire, who, on the 3d instant, transmitted his decision to the board, upon the disputed points so referred to him as aforesaid, wherein and whereby he decides that the government of the Republic of Mex-

ico is held to pay an interest upon the aforesaid sum of $84,230 74/100, after deducting therefrom the sum of $625, being the excess of charge in the disputed item of $10,000 for loss upon 2,500 muskets. Now, in order to carry out the principles established by the decision of the umpire in this case, and at the same time evince our respectful acquiescence in that decision, we do hereby unanimously decree and decide that the Government of Mexico shall pay to Philip E. Thomas and John White, trustees, (to whom the same has been assigned and transferred by Dennis A. Smith,) in trust, for whom it shall concern, according to the rates of their respective interests, the sum of one hundred and forty-one thousand seven hundred and fifty-four dollars and sixty-nine cents, being the one-half of the said Smith's claim, allowed as aforesaid by the umpire, with interest thereon at the rate of six per cent. per annum from the 15th day of April, 1817, and one-ninth of the amount of the shares claimed by the Mexican Company of Baltimore, being one of the said Smith's two shares in the stock of said company, with interest upon the said one-ninth at the rate of five per centum per annum, from the 15th day of April, 1817, that being the rate of interest and the date from which it shall, according to the decision of the umpire, be computed upon the claim of the said company against Mexico.

And we do, also, under the same spirit and from the same motives, unanimously decide and decree that the Government of Mexico shall, according to the decisions of the umpire upon the second claim, to wit, that of the Mexican Company of Baltimore, pay to David M. Perine and John Glenn, trustees for Robert Oliver's legal representatives, and whomsoever else it may concern, in the ratio of their respective interests, the sum of four hundred and seventeen thousand four hundred and twenty-seven dollars and forty-seven cents, being the remaining half of the said D. A. Smith's individual claim, as allowed by the umpire, with interest thereon from the date and at the rate allowed by the umpire, and the remaining eight shares of the said Mexican Company of Baltimore, with interest thereon at the rate of five per centum per annum, from the 15th day of April, 1817, up till the date of this award, the said Smith and the other stockholders of the said company having assigned and transferred to the said D. M. Perine and J. Glenn, in trust for those interested, their respective interests, the said Smith the remaining half of his individual claim, and he and the other members of the said company the remaining eight shares of the stock of that company, which eight shares of the said company's stock, and the remaining half of the said Smith's individual claim, with interest thereon, as above stated, constitute the sum above and hereby decreed to the last above-mentioned trustees.

Given under our hands and seals, at our session room, at the city of Washington, this 9th day of June, 1841.

(Signed)

WILLIAM L. MARCY,
JOHN ROWAN,
PEDRO F. DEL CASTELLE,
JOAQUIM VELASQUES DE LEON.

1172.

NATHANIEL WILLIAMS, trustee of James Williams, appellant,
vs.
CHARLES OLIVER, Robert M. Gibbes, and Thomas Oliver, executors of Robert Oliver, and others, appellees.

NATHANIEL WILLIAMS, permanent trustee of John Gooding, appellant,
vs.
CHARLES OLIVER, Robert M. Gibbes, and Thomas Oliver, executors of Robert Oliver, and others, appellees.

HANNAH C. WILLIAMS, administratrix of James W. Williams, appellant,
vs.
CHARLES OLIVER, Robert M. Gibbes, and Thomas Oliver, executors of Robert Oliver, and others, appellees.

JOHN M. GORDON, permanent trustee of John W. Stump, appellant,
vs.
CHARLES OLIVER, Robert M. Gibbes, and Thomas Oliver, executors of Robert Oliver, and others, appellees.

In the case of Thomas and White *vs.* Dennis A. Smith and others, and on the appeals of Nathaniel Williams from the decree in said cause.

In the court of appeals, for the western shore of Maryland. June term, 1849.

The several appeals above mentioned of Nathaniel Williams, trustee of James Williams; Nathaniel Williams, trustee of John Gooding; of Hannah C. Williams, administratrix of James W. Williams, and John M. Gordon, permanent trustee of John W. Stump, from the decree of the court below in this cause, having come on for hearing, being fully argued by the counsel for the respective parties, and considered by the court, and this court being of opinion that there is no error in the decree of the court below, in awarding and decreeing to the said appellees, Robert M. Gibbes, Charles Oliver, and Thomas Oliver, executors of Robert Oliver, for the shares of John Gooding and James Williams, in certificates, the sum of forty-two thousand eight hundred and twenty-seven dollars and seventy-three and a third cents, $42,827 73⅓; and in money sixteen thousand three hundred and twenty-one dollars and seventy-one cents, ($16,321 71;) and that the said decree of the court below ought to be affirmed as against each and all of the above mentioned appellants.

It is thereupon, this 23d day of June, in the year of our Lord one thousand eight hundred and forty-nine, by this court, and the authority thereof, upon the said appeal of the said Nathaniel Williams, trustee of James Williams, ordered, adjudged and decreed, that the said decree of the court below, awarding and decreeing as aforesaid the share of the said James Williams to the said Robert M. Gibbes, Charles Oliver, and Thomas Oliver, executors of Robert Oliver, be, and the same is hereby in all respects affirmed, without costs, as against the said appellant, trustee of James Williams.

And it is thereupon, this 23d day of June, in the year of our Lord one thousand eight hundred and forty-nine, by this court, and the authority thereof, further ordered, adjudged and decreed, on the appeal of the said Nathaniel Williams, trustee of John Gooding, that the said decree of the court below, awarding and decreeing to the said Robert M. Gibbes, Charles Oliver, and Thomas Oliver, executors of Robert Oliver as aforesaid, the share of said John Gooding be, and the same is in all respects affirmed, without costs, as against said appellant, Williams, as trustee of said Gooding. And it is also, on the day and year aforesaid, and by the authority of this court, further ordered, adjudged, and decreed, on the appeal of Hannah C. Williams, administratrix of James W. Williams, that the said decree of the court below, awarding and decreeing to the said Robert M. Gibbes, Charles Oliver, and Thomas Oliver, executors of Robert Oliver as aforesaid, the share of said James Williams, be, and the same is hereby in all respects affirmed, without costs, as against the said appellant. And it is further ordered, adjudged and decreed, by the authority aforesaid, on the appeal of said John M. Gordon, permanent trustee of John W. Stump, that the said decree of the court below, awarding and decreeing as aforesaid the share of James Williams to the said Robert M. Gibbes, Charles Oliver, and Thomas Oliver, executors of Robert Oliver, be, and the same is hereby in all respects affirmed, without costs, as against the said appellant.

And it is further ordered, adjudged and decreed, by the authority aforesaid, that the said appellees and trustees, John Glenn and David M. Perine, pay to the said Robert M. Gibbes, Charles Oliver, and Thomas Oliver, executors of Robert Oliver, the aforesaid amount in certificates and the aforesaid amount in money decreed to the said executors by the aforesaid decree of the court below, for the shares of John Gooding and James Williams, together with all interests, profits, or accumulations thereon, which may have arisen, and been received by them, the said trustees, on account of said certificates, or on account and from any investment of any proceeds of the same, or any investment of the said proceeds, or of the said sum decreed to be paid in money, which may have been made under the order and direction of the court below.

THOMAS B. DORSEY,
ARA SPENCE,
ROBERT N. MARTIN.

And thereupon, according to the provisions, force, form, and effect of the act of the general assembly of Maryland of 1832, chapter 302, section 6, the said court of appeals here file the opinions of the court for and in respect of its determination of the appeal aforesaid, the determination of the said court of appeals being had upon oral argument on the part of the parties aforesaid, and which said opinions are as follows, to wit:

The opinion of the honorable Robert N. Martin, one of the jugdes of the said court, in the matter of N. Williams, trustee of James Williams.

The decree of the court below ought, I think, to be affirmed in this case, for reasons assigned in the case of N. Williams, trustee of John Gooding, against the executors of Robert Oliver.

I think that George Winchester is to be considered, upon the facts exhibited in this record, as duly and legally appointed the permanent trustee of James Williams; that the sale by him of the shares in controversy to Robert Oliver was fairly and bona fide made, within the meaning of the act of assembly of 1841, chapter 309; and that that statute being, in my opinion, neither repugnant to the Constitution of the United States nor the constitution of the State of Maryland, is to (be) regarded as a valid exercise of legislative power.

The opinion of the honorable Thomas B. Dorsey, chief judge, and of the honorable Ara Spence, judge.

June term, 1849. *Court of appeals, W. S. Maryland. Nos.* 144, 145, 146, 147, 148, 149.

The solicitors for the appellants in the aforegoing cases having, with a view to an appeal from the decree of affirmance by this court, requested some expression of the grounds upon which said decrees of affirmance were passed, the undersigned, being two of the three judges who sat in judgment on those cases, state, that the grounds on which they affirmed the judgments were: First, the reasons assigned by a majority of this court for the reversal of the decree in No. 143, Oliver's ex'rs et al. vs. Gill, permanent trustee of Goodwin; and that, if in this there was an error, the judgments were affirmed in No. 144, because George P. Stevenson forfeited his claim by his failure to comply with the stipulations in his contract, and because he surrendered up to his co-associates all his interest in the Mexican Company; in No. 145 and 146, because, under the proceedings based on or originating from the insolvent petitions of John Gooding and James Williams, and the act of assembly applicable thereto, Robert Oliver acquired a valid title to all the interest of said James Williams and John Gooding in the fund in controversy; in Nos. 147 and 148, for the reasons assigned by Judge Martin as the basis of his opinion in those cases; and in No. 149, be-

cause the appellants therein hath shown no title to or interest in the fund in controversy, either upon the law or facts in the case.

June 26th, 1849. THOMAS B. DORSEY.
ARA SPENCE.

The opinion of the honorable the judges last aforesaid, mentioned in No. 143, being also as follows:

Court of appeals, June term, 1849.

Appeal from the equity side of Baltimore county court.

OLIVER'S EXECUTORS and others
vs.
GEORGE M. GILL, permanent trustee of Lyde Goodwin et als.

The majority of this court who sat in the trial of this cause, (and by which was decreed the reversal of the decree of the county court,) at the instance of the solicitors of the appellees briefly state the following as their reasons for such reversal. They are of the opinion that the entire contract upon which the claim of the appellees is founded is so fraught with illegality and turpitude as to be utterly null and void, and conferring no rights or obligations upon any of the contracting parties, which can be sustained or countenanced by any court of law or equity in this State or of the United States; that it has no legal or moral obligation to support it, and that therefore, under the insolvent laws of Maryland, such a claim does not pass to or vest in the trustee of an insolvent petitioner. It forms no part of his property or estate within the meaning of the legislative enactments constituting our insolvent system. It bears no analogy to the cases decided in Maryland and elsewhere, of claims not recoverable in a court of justice, which, nevertheless, have been held to vest in the trustee of an insolvent or the assignee of a bankrupt. In the cases referred to, the claims as concerned those asserting them were on their part tainted by no principle of illegality or immorality; on the contrary, were sustained by every principle of natural law and natural justice, and nothing was wanting to render them recuperable but a judicial tribunal competent to take cognizance thereof. Wholly dissimilar is the claim before us; such is its character that it cannot be presented to a court of justice but by a disclosure of its impurities, and if anything is conclusively settled or ought to be so regarded, it is that a claim thus imbued with illegality and corruption will never be sanctioned or enforced by a court either of law or equity.

Entertaining this view of the case, it is unnecessary to examine the various minor points which were raised in the argument before us.

Memorandum.—This cause is No. 146, on the docket of June term, 1849.

Test: R. W. GILL, *Clerk.*

Exhibit to answer O G W, No. 4.

JOHN S. WILLIAMS, adm'r of James Williams,
vs.
CHARLES OLIVER and Robert M. Gibbes, surviving ex'ors of Robert Oliver.

This indenture, made this twenty-fourth day of June, in the year of our Lord one thousand eight hundred and nineteen, between James Williams, of Baltimore county, in the State of Maryland, of the one part, and George Winchester of the other part:

Whereas on the application of the said James Williams to the honorable William H. Ward, associate judge of Baltimore county court, for the benefit of the acts of Assembly for the relief of insolvent debtors, the said judge did refer the said application together with the schedule, petition and other papers, to the commissioners of insolvent debtors of the city and county or Baltimore.

And whereas the said commissioners, on the 24th day of June, appointed the above named George Winchester provisional trustee for the benefit of the creditors of the said James Williams, and did order and direct that the said James Williams should execute a deed to the said trustee for all his property, estate and effects, and should deliver the same to the said trustee, together with the books, papers, accounts, bonds, notes, and evidences of debt, agreeably to the provisions of the acts of Assembly in such cases made and provided.

Now this indenture witnesseth, that the said James Williams, in pursuance of the premises, and in consideration of one dollar current money to him paid by said George Winchester, hath granted, bargained, and sold, released, conveyed, assigned, transferred and set over, and by these presents doth freely and absolutely grant, bargain and sell, release, convey, assign, transfer, and set over unto the said George Winchester, his heirs, executors, and administrators, all and every the household goods and furniture, effects and chattels, debts and sum and sums of money, belonging to and due or owing to him, the said James Williams, as are in the schedule of the said James Williams particularly mentioned, and also all the other property and estate, real, personal and mixed, of what kind, nature or quality soever, (excepting the wearing apparel, bed and bedding of the said James Williams,) which the said James Williams has or claims any title to or is in any respect entitled to in possession, remainder or reversion: to have and to hold the same, and every part and parcel thereof, unto him, the said George Winchester, his heirs, executors, administrators and assigns forever; in trust for the creditors of the said James Williams, and for their use and benefit, agreeably to the act of Assembly entitled an act for the relief of sundry insolvent debtors, and the several supplements thereon.

In witness whereof the said James Williams hath hereunto set his hand and affixed his seal, on the day and year first above mentioned.

JAMES WILLIAMS, [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN MITCHELL.

BALTIMORE COUNTY, *ss.*

On the twenty-fourth day of June, in the year eighteen hundred and nineteen, came James Williams, before us, two justices of the peace for the county aforesaid, and acknowledged the within instrument of writing to be his act and deed, according to the true intent and meaning thereof, and the act of Assembly in that case made and provided.

Acknowledged before JOHN MITCHELL,
WILLIAM H. MEDCALF.

Exhibit to answer O G W, No. 5.

JOHN S. WILLIAMS, adm'r of James Williams,
vs.
CHARLES OLIVER and Robert M. Gibbes, surviving executors of Robert Oliver.

In Baltimore county court, March term, 1825. In the case of James Williams, an insolvent debtor.

Ordered by the court that the trustee dispose of any part of the personal estate of the insolvent debtor, remaining unsold, at private or public sale, as he may judge best.

(Signed) WILLIAM H. WARD.

Exhibit to answer O G W, No. 6.

JOHN S. WILLIAMS, adm'r of James Williams,
vs.
CHARLES OLIVER and Robert M. Gibbes, surviving executors of Robert Oliver.

BALTIMORE, 2d April, 1825.

For value received, I hereby assign to Robert Oliver, esq., one share of the Mexican Company, commonly called the Mina expedition, and formerly belonging to James Williams, an insolvent debtor, and now held by me as his trustee.

For value received, I hereby assign one other share of the Mexican Company, or Mina expedition, formerly belonging to John Gooding, an insolvent debtor, and now held by me as his trustee, to the said Robert Oliver, and I bind myself to execute all or any other papers or assignments which Mr. Oliver or his counsel may deem necessary or proper to render the assignment effectual.

(Signed) GEO. WINCHESTER.

BALTIMORE, 2d April, 1825.

I have this day received from Robert Oliver, esq., four thousand dollars, being the consideration for which I have this day sold and assigned him two shares in the Mexican Company, as will appear by my assignment, bearing equal date herewith.

(Signed) GEO. WINCHESTER.

Exhibit to answer O G W, No. 7.

(Official.)

WILLIAMS, adm'r WILLIAMS,
vs.
CHARLES OLIVER and Robert M. Gibbes, surviving executors of Robert Oliver.

DEPARTMENT OF STATE,
Washington, April 15, 1840.

Claimants upon the Government of the Mexican republic, whose cases asking the interposition of the Government of the United States may have been presented to this department, or to the diplomatic agent of the United States at Mexico, prior to the 11th of April, 1839, are hereby notified, that pursuant to a convention between the two governments of that date, a joint commission to hear and decide upon the claims will meet within this city within three months from the 7th instant.

Which notice is prefixed to the following certificate of publication, to wit:

OFFICE OF THE AMERICAN,
Baltimore, Nov. 25th, 1843.

This is to certify, that the annexed copy of an official notice to claimants upon Mexico was published in the American and Commercial Daily Advertiser, on the 17th day of April, 1840, and that the same was published only once.

DOBBIN, MURPHY & BOSE,
Per E. A. SLICER.

(*No.* 3.)—*Claims on Mexico.*

Notice is hereby given to all persons having claims upon the Republic of Mexico, which were submitted by the convention of April 11, 1839, to the mixed commission now sitting in the city of Washington, that more than half the time limited by the said convention for the session of the said commission has already expired, and that it will close its labors within nine months from this date, yet not one-half of the claims which it was organized to adjust have been prepared for its consideration.

In consequence of a want of prepared cases, the business of the board has been delayed; claimants are, therefore, hereby urged to complete the preparation of their cases with the least possible delay, to the end that the commission may be enabled to accomplish the objects for which it was constituted.

By the order of the Board of Commissioners.

ALEXANDER DIMITRY,
LUCAS DE PALACIO Y MAGAROLA,
Secretaries.

Washington, June 16.

Which said notice is prefixed the following certificate of publication, to wit:

OFFICE OF THE AMERICAN,
Baltimore, Nov. 25th, 1843.

This is to certify, that the annexed notice to persons having claims upon the Mexican republic, signed by the secretaries to the Board of Commissioners, was published in the American & Commercial Daily Advertiser, on the 2d day of July, 1841, and every other day thereafter, for two weeks.

DOBBIN, MURPHY & BOSE,
Per E. A. SLICER.

Notice.

All persons interested in the claims of Dennis A. Smith and the Mexican Company of Baltimore, on the Government of Mexico, are hereby notified to present their vouchers, properly authenticated, to the undersigned, appointed special auditor by Baltimore county court, in the equity case of Philip E. Thomas and John White, trustees, against Dennis A. Smith and others, on or before the first day of February, 1842. J. J. ATKINSON, *Auditor.*

Baltimore, October 27th, 1841.

OFFICE OF THE AMERICAN,
Baltimore, September 8th, 1843.

This is to certify, that the annexed advertisement of notice to persons interested in the claims of Dennis A. Smith and the Mexican Company of Baltimore, was published in the American and Commercial Daily Advertiser, once a week, for three successive weeks, commencing on the 28th day of October, 1841.

DOBBIN, MURPHY & BOSE,
Per EDWARD A. SLICER.

Notice.

In pursuance of an order of Baltimore county court, sitting as a court of equity, passed in the case depending in said court, wherein Philip E. Thomas and John White, trustees, are complainants, and Dennis A. Smith and others are defendants, notice is hereby given to all persons having claims upon the funds awarded to the Mexican Company of Baltimore, and to Dennis A. Smith, by the commissioners under the treaty between the United States and Mexico, to file their said claims with the undersigned, special auditor in the above case, with the vouchers and proofs to support the same, on or before the fifth day of October next, otherwise they may be debarred from the benefit of the distribution of the funds aforesaid, which will thereafter be made.

J. CARRERE, *Special auditor.*

Which notice is prefixed to the following certificate of publication, to wit:

176.

OFFICE OF THE AMERICAN, BALT., *Nov. 2d*, 1843.

This is to certify that the prefixed notice was published in the American once a week for three successive weeks, commencing on the 5th September, 1843. DOBBIN, MURPHY & BOSE.

Afterwards, to wit, on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and fifty-three, the parties aforesaid, by their attorneys aforesaid, filed in the circuit court here an agreement in the words and of the tenor following, to wit:

Agreement.

In the circuit court of the United States.

WILLIAMS
vs.
OLIVER'S executors.

In the above case it is agreed by counsel—

1st. That James Williams, the complainant intestate departed this life in the month of March, in the year 1838.

2d. That letters of administration were awarded to the complainant by the orphan's court of Harford county, in March, 1852, upon the estate of the said James Williams.

3d. That either party may read from the printed record of the case of Philip E. Thomas and John White *vs.* Dennis A. Smith, and others, the proceedings of Baltimore county court, and of the court of appeals of Maryland, upon the petition of Nathaniel Williams, trustee in insolvency of James Williams aforesaid, *vs.* The executors of Robert Oliver, and Glenn, and Perine, and the answers of said Glenn and Perine, and said executors, and the proceedings upon the petition of the executors of Robert Oliver, which petitions and answers are found on pages 26, 27, 28, 81, 82, 83, 84, 97, 177, 178.

The proceedings in insolvency in the case of the application of the said James Williams, printed on pages 185–96 inclusive.

The deed of trust from R. M. Gibbes, John Sullivan and others, on behalf of the Mexican Company of Baltimore to John Glenn and David M. Perine, of the 8th May, 1841, on pages 123–24. The power of attorney from John Sullivan and others, members or assignees of the said company to Robert Oliver, of the 22d March, 1825, and from Robert Oliver to John Mason and Dennis A. Smith, of the 24th March, 1825, on pages 156, 157, 158; the award of the Board of Commissioners under the Mexican treaty of the 11th May, 1839, on pages 99 and 101.

The ledger book of the Mexican Company with all the entries and documents therein, on pages 244, 304, both inclusive, and the depositions of John Sullivan and Dennis A. Smith.

4th. It is further agreed that the accounts reported by the auditor in the above case shall be taken as accurate, by ascertaining the amount of the share of James Williams, deceased, in the funds awarded to the

Mexican Company by the above award, either party being at liberty, however, in the event of a reference to the master to increase or diminish said amount by any additional items, or charges, or credits accruing since such settlement, and that the report of Glenn and Perine to the court of appeals in said cause, with all the documents, vouchers and releases thereto belonging, may be read from a transcript of the same, certified by the clerk of the court of appeals, as if the same were each fully proved.

5th. That certificates for various sums amounting in the aggregate to the sum awarded by the commissioners on account of the Mexican Company's claim were delivered to Glenn and Perine on the 27th October, 1841, in the form of the copy filed in the case of McBlair *vs.* Oliver's executors, marked copy No. 1. That of the twenty instalments of five per cent. each, in which the claim was payable, three instalments were received by Glenn and Perine in money from the Mexican government through the United States prior to the 27th November, 1846; two instalments in 5 per cent. stock of the United States, from the United States, between the 27th November, 1846, and 1847, January, 1847, and the residue in money from the United States on the 30th October, 1848; all which funds were carried by them into Baltimore county court in the said case of Thomas and White *vs.* Dennis A. Smith and others, and under its orders invested with the accumulations in stocks of the United States, which stocks and certain moneys, part of said fund, the accumulations thereof set forth in the report of Glenn and Perine aforesaid, constitute the subject of the decree of the court of appeals in that suit.

5th. That either party may read the decrees of the Mexican Congress of the 19th July, 1823, and of the 28th June, 1824, from the copies herewith filed, marked No. 2 and No. 3.

6th. That the defendants may read the exhibits Nos. 2, 3, 4, filed with the answer of Glenn and Perine on page 96, 97 of the printed record, with the same effect as if the same were formally proved.

It being agreed that order of Baltimore county court, marked No. 2, while signed by the judge was never entered on the dockets or records of the court, nor filed among the papers, and that the defendants may read the deposition of Thomas Kell in relation to said order and assignment on page 142.

And it is agreed that Robert Oliver paid George Winchester, for the assignment No. 3 of William's claim, the amount of two thousand dollars.

7th. That the defendants may read from the printed record all the notices from the State Department and orders of court, and notices to claimants under the treaty with Mexico, published by the State Department, and under the direction *and under the direction* of Baltimore county court.

9th. That either party may take depositions before either of the commissioners of the court on reasonable notice to the opposite counsel, without the taking out of a commission or filing interrogatories.

1177.

10th. That letters testamentary were granted the respondents as stated in their answer, and that the notice, whereof a copy is filed, marked No. 4, was by them published in

J. M. CAMPBELL,
REVERDY JOHNSON,
For defendants.
H. WINTER DAVIS,
G. L. DULANY,
For complainants.

And on the same day, to wit, the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and fifty-three, the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here the following agreement, to wit:

WILLIAMS, administrator,
vs.
OLIVER'S executors.

It is agreed between the parties to this cause, that as to five-eighths of the fund sued for, the cause shall be proceeded in and decided as if that amount of the fund was in the hands of the executors, notwithstanding the payment of the whole fund over as averred in their answer.

It is admitted also, that the other eighths of the fund were paid over before the filing of the bill, to the administrator in New York of Thomas Oliver, deceased, and has been by him distributed, and that such payment of said three-eighths by the executors was made by them upon the advice of counsel that it was their duty to make it. This agreement is not to effect in any way any of the defences taken in the answer, except the defence that the five-eighths above mentioned were paid over before suit brought. As witness our hands, this 2d November, 1853.

G. L. DULANY,
Solicitor for complainant.
REVERDY JOHNSON,
J. MASON CAMPBELL,
Defendants' solicitors.

Afterwards, to wit, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and fifty-three, the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here the following agreement, to wit:

Agreement.

It is agreed that *that* the evidence in the printed record in regard to an assignment of one-half of James Williams's share, alleged to have been made by him to Stump and Williams, and the proceedings of court thereon, may be read on the hearing of this cause, in the same manner

as the rest of the evidence in said record is admitted to be read, and that the answer shall be considered as amended, to allow the introduction of said evidence.

REVERDY JOHNSON,
For defendants.
G. L. DULANY,
For complainant.

Afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-three, the parties aforesaid, by their attorneys aforesaid, filed in the circuit court here the following agreement, to wit:

Agreement.

McBlair
vs.
Oliver's Executors.

Gooding, administrator Gooding,
vs.
Same.

Williams, adm'r of Williams,
vs.
Same.

} Filed 1st Dec., 1853.

It is further agreed that the defendants may read in evidence from the printed record any of the pleadings, evidence, proceedings or decrees, either in Baltimore county court or in the court of appeals, in the case of Thomas and White against Glenn and others, for any purpose for which the same may be competent evidence in this cause.

G. L. DULANY,
Solicitor for complainant.
J. M. CAMPBELL,
For defendants.

Endorsed agreement.

This applies to this case and to the case of Williams's administrator *vs.* Oliver's executors, and to the case of Gooding's administrator *vs.* Oliver's executors.

Afterwards, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and fifty-three, the court here made and passed the following decree, to wit:

1178.

In the circuit court of the United States for the district of Maryland.

JOHN S. WILLIAMS, administrator of James Williams, vs. ROBERT M. GIBBES and Charles Oliver, executors of Robert Oliver. } In equity.

This cause standing ready for hearing and being submitted, the counsel for the parties were heard, and the proceedings read and considered.

It is thereupon, this third day of December, in the year eighteen hundred and fifty-three, by this court adjudged, ordered, and decreed that the bill of the complainant be, and the same is hereby dismissed; and that the complainant pay the defendants their costs of this suit, to be taxed by the clerk.

R. B. TANEY,
WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the said John S. Williams, administrator as aforesaid, by his solicitor as aforesaid, in open court hath prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December instant, and to him it is granted.

Thereupon, it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid—

I hereunto subscribe my name and affix the seal of the said circuit court this sixth day of December, in the year of our Lord one thousand eight hundred and fifty-three.

[SEAL.]

THOS. SPICER, *Clerk.*